

1 JOSEPH H. HARRINGTON
2 Acting United States Attorney
3 Eastern District of Washington
4 Ian L. Garriques
5 Assistant U.S. Attorney
6 402 E. Yakima Ave., Ste. 210
7 Yakima, WA 98901-2760
8 Telephone: (509) 454-4425

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SEP 13 2017

SEAN F. McAVOY, CLERK
DEPUTY
YAKIMA, WASHINGTON

6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA,) NO. 1:17-CR-2020-SMJ
9 Plaintiff,)
10 v.) Plea Agreement
11 SUNDON LARSELL MILLER)
12 aka Sundron Larsell Switzler Miller,)
13 Defendant.)
14

15 Plaintiff United States of America, by and through Joseph H. Harrington, Acting
16 United States Attorney, and Ian L. Garriques, Assistant United States Attorney, for the
17 Eastern District of Washington, and Defendant Sundron Larsell Miller (hereinafter
18 "Defendant"), and the Defendant's counsel, Michael W. Lynch, agree to the following
19 Plea Agreement:

20 1. Guilty Plea and Maximum Statutory Penalties:

21 The Defendant agrees to plead guilty the Indictment filed on May 9, 2017,
22 charging the Defendant with Felon in Possession of Firearm and Ammunition, in
23 violation of 18 U.S.C. § 922(g)(1). Pursuant to Local Criminal Rule 11, the Defendant
24 agrees that a United States Magistrate Judge may hear his felony guilty plea, rather than
25 having his plea heard by a United States District Judge.

26 The Defendant understands that the maximum statutory penalty for Felon in
27 Possession of Firearm and Ammunition, in violation of 18 U.S.C. § 922(g)(1), is 10
28

1 years; a fine of \$250,000; or both; a term of supervised release of not more than 3 years;
2 and a \$100 special penalty assessment.

3 The Defendant understands that a violation of a condition of supervised release
4 carries an additional penalty of re-imprisonment for all or part of the term of supervised
5 release without credit for time previously served on post-release supervision.

6 2. The Court is Not a Party to the Agreement:

7 The Court is not a party to this Plea Agreement and may accept or reject this Plea
8 Agreement. Sentencing is a matter that is solely within the discretion of the Court. The
9 Defendant understands that the Court is under no obligation to accept any
10 recommendations made by the United States and/or by the Defendant; that the Court will
11 obtain an independent report and sentencing recommendation from the U.S. Probation
12 Office; and that the Court may, in its discretion, impose any sentence it deems
13 appropriate up to the statutory maximums stated in this Plea Agreement.

14 The Defendant acknowledges that no promises of any type have been made to the
15 Defendant with respect to the sentence the Court will impose in this matter. The
16 Defendant understands that the Court is required to consider the applicable sentencing
17 guideline range, but may depart upward or downward under the appropriate
18 circumstances.

19 The Defendant also understands that should the sentencing judge decide not to
20 accept any of the parties' recommendations, that decision is not a basis for withdrawing
21 from this Plea Agreement or a basis for withdrawing this plea of guilty.

22 3. Waiver of Constitutional Rights:

23 The Defendant understands that by entering this plea of guilty the Defendant is
24 knowingly and voluntarily waiving certain constitutional rights, including:

- 25 a. The right to a jury trial;
- 26 b. The right to see, hear and question the witnesses;
- 27 c. The right to remain silent at trial;
- 28 d. The right to testify at trial; and

1 e. The right to compel witnesses to testify.

2 While the Defendant is waiving certain constitutional rights, the Defendant
3 understands the Defendant retains the right to be assisted through the sentencing and any
4 direct appeal of the conviction and sentence by an attorney, who will be appointed at no
5 cost if the Defendant cannot afford to hire an attorney.

6 4. Elements of the Offense:

7 The United States and the Defendant agree that in order to convict the Defendant
8 of Felon in Possession of Firearm and Ammunition, in violation of 18 U.S.C. § 922(g)(1),
9 as charged in the Indictment, the United States must prove beyond a reasonable doubt the
10 following elements:

11 First, the Defendant knowingly possessed a firearm and ammunition;

12 Second, the firearm and ammunition had been shipped from one state to another or
13 between a foreign nation and the United States; and

14 Third, at the time the Defendant possessed the firearm and ammunition, Defendant
15 had been convicted of a crime punishable by imprisonment for a term exceeding one
16 year.

17 9th Cir. Crim. Jury Instr. 8.65 (2010, modified).

18 5. Factual Basis and Statement of Facts:

19 The United States and the Defendant stipulate and agree that the following facts
20 are accurate; that the United States could prove these facts beyond a reasonable doubt at
21 trial; and these facts constitute an adequate factual basis for the Defendant's guilty plea:

22 On April 12, 2017, at about 2250 hours, Yakima Nation Police Department
23 (YNPD) Officer Pena observed a red Acura sedan, with Washington license AYR7826, at
24 a residence in White Swan, Washington. Officer Pena advised YNPD Officer Enriquez of
25 the vehicle at the residence. Officer Enriquez knew the residence to be gang related and
26 knew the registrant for the Acura. He also knew the vehicle was being used by the
27 registrant and her boyfriend, Defendant Sundron Larsell Miller ("Miller"). Officer
28 Enriquez was also aware that persons associated with the vehicle were involved in the

1 East Side Piru gang. Officer Enriquez recalled that Miller had an active warrant for his
2 arrest for DUI from Yakima County. Officer Enriquez confirmed with dispatch that the
3 license plate tabs of the Acura were expired.

4 At about 2309 hours, Officer Enriquez observed the vehicle pull out of the
5 residence and conducted a traffic stop. The Acura pulled into another driveway in White
6 Swan. The passenger, James Lee Lomakema ("Lomakema"), ran from the vehicle to the
7 backyard towards a large wooded area. Officers Pena and Enriquez gave chase on foot.
8 Officers Pena and Enriquez observed Lomakema attempting to jump a chain link fence.
9 Lomakema fell face first over the fence and tried to pick something up from the ground.
10 Lomakema continued to run northbound and Officers Pena and Enriquez failed to locate
11 him.

12 Prior to the foot chase, Officer Enriquez identified the vehicle's driver as
13 Defendant Miller. YNPD Officer Ives had also arrived on scene and remained with
14 Miller during the foot chase. Officer Ives reported that Miller had identified the
15 passenger as his cousin, Lomakema. Miller was placed under arrest for his warrant and
16 driving with a suspended license. Miller was advised of his constitutional rights which
17 he acknowledged.

18 Officer Enriquez returned to the vehicle and observed, through the open passenger
19 door, a pistol magazine on the front driver's seat and multiple bullets of different calibers
20 scattered throughout the vehicle. Officer Enriquez confirmed with dispatch that Miller
21 and Lomakema were convicted felons.

22 Officer Enriquez obtained a telephonic search warrant and found a variety of
23 different types and calibers of ammunition throughout the vehicle. Officer Enriquez
24 located a glass pipe commonly used to smoke methamphetamine and stopped the search

25 ///

26 ///

27 ///

28 //

1 in order to amend the search warrant. Officer Enriquez subsequently located a black
2 9mm magazine and a 7.92x57 caliber round on the driver's seat where Miller had been
3 located. Officers located a 9mm extended magazine underneath the seat and several .357
4 caliber rounds and 7.62x39 caliber rounds in the door panel.

5 Officer Enriquez then located a Smith & Wesson, Model 19-3, .357 caliber
6 revolver, bearing serial number 2K1871, a Hawes Firearms Co., Model Western Marshal
7 .357 caliber revolver, bearing serial number 3/13031, a Colt, Model Police Positive, .38
8 caliber revolver, bearing serial number 1646, and a Ruger, Model Mini Thirty, 7.62x39
9 caliber rifle, bearing serial number 185-79714, in the trunk of the vehicle.

10 Officer Pena searched Miller and located a round of Hornady 9 millimeter caliber
11 ammunition in his clothing pocket as well as a plastic bag with a black/brown tar
12 substance suspected to be heroin. Miller informed Officer Pena that the substance was
13 "black," which is a street name for heroin. One round of Wolf 7.62x39 caliber
14 ammunition was also found on the floorboard of the YNPD vehicle where Miller had
15 been sitting. Miller was subsequently arrested on his Yakima County warrant and
16 transported to the Yakima Nation jail.

17 In post-*Miranda* statements to federal officers, Miller and Lomakema both later
18 acknowledged handling the preceding firearms. ATF confirmed that both Miller and
19 Lomakema have prior felony convictions. ATF also confirmed that the five firearms
20 listed above, as well as, the round of Hornady 9mm caliber ammunition and the round of
21 Wolf 7.62x39 caliber ammunition travelled in and affected interstate commerce.

22 This statement of facts does not preclude either party from presenting and arguing,
23 for sentencing purposes, additional facts which are relevant to the guideline computation
24 or sentencing, unless otherwise prohibited in this agreement.

25 6. The United States Agrees:

26 a. Not to File Additional Charges:

27 The United States Attorney's Office for the Eastern District of Washington agrees
28 not to bring any additional charges against the Defendant based upon information in its

1 possession at the time of this Plea Agreement and arising out of Defendant's conduct
2 involving illegal activity charged in the Indictment, unless the Defendant breaches this
3 Plea Agreement any time before or after sentencing.

4 7. United States Sentencing Guideline Calculations:

5 The Defendant understands and acknowledges that the United States Sentencing
6 Guidelines (hereinafter "U.S.S.G.") are advisory to this case and that the Court will
7 determine the Defendant's applicable sentencing guideline range at the time of
8 sentencing.

9 a. Base Offense Level:

10 The United States and the Defendant agree that pursuant to U.S.S.G.
11 § 2K2.1(a)(4)(B), the Base Offense Level is twenty (20), because Defendant is a
12 prohibited person and the offense involved a semiautomatic firearm capable of accepting
13 a large capacity magazine.

14 b. Specific Offense Characteristics:

15 The United States and the Defendant also agree and stipulate that the base offense
16 level is increased by two (2) levels pursuant to U.S.S.G. § 2K2.1(b)(1)(A), because the
17 offense involved three (3) to seven (7) firearms.

18 The United States and the Defendant also agree and stipulate that the base offense
19 level is increased by another two (2) levels pursuant to U.S.S.G. § 2K2.1(b)(4)(A),
20 because the offense involved a stolen firearm.

21 8. Acceptance of Responsibility:

22 If the Defendant pleads guilty and demonstrates a recognition and an affirmative
23 acceptance of personal responsibility for the criminal conduct; provides complete and
24 accurate information during the sentencing process; does not commit any obstructive
25 conduct; accepts this Plea Agreement; and enters a plea of guilty pursuant to this Plea
26 Agreement, the United States will recommend that the Defendant receive a two (2) level
27 reduction for acceptance of responsibility, and if the Defendant's adjusted offense level is
28 sixteen (16), or greater, the United States will move for a one (1)-level reduction for

1 timeliness. *See* U.S.S.G. §§ 3E1.1(a) and (b).

2 The Defendant and the United States agree that the United States may at its option
3 and upon written notice to the Defendant, not recommend a three (3) level downward
4 reduction for acceptance of responsibility if, prior to the imposition of sentence, the
5 Defendant is charged or convicted of any criminal offense whatsoever or if the Defendant
6 tests positive for any controlled substance.

7 9. Criminal History:

8 The United States and the Defendant understand that the Defendant's criminal
9 history computation ultimately will be determined by the Court after review of the
10 Presentence Investigation Report. The United States and the Defendant have made no
11 agreement and make no representations as to the criminal history category, which shall be
12 determined after the Presentence Investigation Report is completed.

13 10. Departures and/or Variances:

14 The United States and the Defendant agree that they will not seek either an upward
15 or downward departure and/or variance from the applicable Guidelines sentencing range.

16 11. Incarceration:

17 The United States and the Defendant agree and stipulate to recommend that the
18 Court impose a sentence of imprisonment at the low-end of the applicable Guidelines
19 sentencing range.

20 12. Criminal Fine:

21 The United States and the Defendant are free to make whatever recommendation
22 concerning the imposition of a criminal fine that they believe is appropriate.

23 13. Supervised Release:

24 The United States and the Defendant agree to recommend that the Court impose a
25 term of supervised release of three (3) years. and to recommend that the Court impose the
26 statutorily mandated, standard, and suggested special conditions of supervised release
27 recommended by the U.S. Probation Office and as set forth in the Presentence

28 ///

Dr. Se.
TG
SLM

1 ~~Investigation Report.~~

2 14. Mandatory Special Penalty Assessment:

3 The Defendant agrees to pay the \$100 mandatory special penalty assessment to the
4 Clerk of Court for the Eastern District of Washington, at or before sentencing, pursuant to
5 18 U.S.C. § 3013 and shall provide a receipt from the Clerk to the United States before
6 sentencing as proof of this payment.

7 15. Payments While Incarcerated:

8 If the Defendant lacks the financial resources to pay the monetary obligations
9 imposed by the Court, the Defendant agrees to earn the money to pay toward these
10 obligations by participating in the Bureau of Prisons' Inmate Financial Responsibility
11 Program.

12 16. Additional Violations of Law Can Void Plea Agreement:

13 The Defendant and the United States agree that the United States may at its option
14 and upon written notice to the Defendant, withdraw from this Plea Agreement or modify
15 its recommendation for sentence if, prior to the imposition of sentence, the Defendant is
16 charged or convicted of any criminal offense whatsoever or if the Defendant tests
17 positive for any controlled substance.

18 17. Hyde Amendment Waiver:

19 The Defendant waives any claim under the Hyde Amendment, 18 U.S.C. § 3006A
20 (Statutory Note), for attorney's fees and other litigation expenses arising out of the
21 investigation or prosecution of this matter.

22 18. Administrative Forfeiture:

23 The Defendant, SUNDRON LARSELL MILLER aka Sundron Larsell Switzler
24 Miller, agrees to voluntarily forfeit any and all right, title, and interest that he has in any
25 and all firearms and ammunition held in the custody of the Bureau of Alcohol, Tobacco,
26 Firearms and Explosives (ATF), in favor of ATF. The assets to be administratively

27 ///

1 forfeited include, but are not limited to:

2 FIREARMS/AMMUNITION

3 -GLOCK GMBH 17 GEN4 Pistol CAL: 9 SN: YRM325;
 4 -COLT POLICE POSITIVE Revolver CAL: 38 SN: 1646;
 5 -SAUER & SOHN SONS WESTERN MARSHAL Revolver CAL: 357
 SN: 3/13031;
 6 -SMITH & WESSON Unknown type Revolver CAL: 357 SN: 2K1871;
 7 -RUGER MINI 30 Rifle CAL: 762 SN: 185-79714;
 8 -23 Rounds Assorted Ammunition CAL: 22;
 9 -15 Rounds Assorted Ammunition CAL: 9;
 10 -8 Rounds Assorted Ammunition CAL: 38;
 11 -3 Rounds Assorted Ammunition CAL: 40;
 12 -15 Rounds Assorted Ammunition CAL: 357;
 13 -12 Rounds Assorted Ammunition CAL: 762;
 14 -1 Rounds REMINGTON Ammunition CAL: 308;
 15 -3 Rounds Assorted Ammunition CAL: 12;
 16 -3 Rounds Assorted Ammunition CAL: 792;
 17 -38 Rounds PMC Ammunition CAL: 9;
 18 -1 Rounds WOLF Ammunition CAL: 762;
 19 -1 Rounds HORNADY Ammunition CAL: 9;
 20 -1 Rounds Assorted Ammunition CAL: 20; and,
 21 -6 Rounds PMC Ammunition CAL: 357.

22 The Defendant agrees not to contest the forfeiture of the assets in any
 23 administrative forfeiture proceedings initiated against said assets by ATF, and
 24 hereby agrees to execute any and all forms, documents, and pleadings necessary to
 25 effectuate the administrative forfeiture of any assets seized by ATF in this matter.
 26 Defendant consents to the forfeiture, destruction, and/or return of assets to lawful
 27 owners, without further notice. Defendant denies knowing possession of the Glock.

28 Defendant agrees to hold all law enforcement agents and the United States,
 its agents, and its employees harmless from any claims whatsoever arising in
 connection with the seizure, forfeiture, destruction or return to lawful owner, of

///

///

1 any asset(s) covered by this agreement.

2 19. Appeal Rights:

3 The Defendant expressly waives his right to appeal his conviction, sentence,
4 forfeiture, and supervised release imposed by the Court. Furthermore, the Defendant
5 expressly waives his right to file any post-conviction motion attacking his conviction and
6 sentence, including a motion pursuant to 28 U.S.C. § 2255, except one based upon
7 ineffective assistance of counsel based on information not now known by Defendant and
8 which, in the exercise of due diligence, could not be known by Defendant by the time the
9 Court imposes the sentence.

10 The Defendant acknowledges that this waiver shall result in the dismissal of any
11 appeal or collateral attack the defendant might file challenging the conviction or sentence
12 in this case, except for ineffective assistance of counsel as noted above. If the Defendant
13 files a notice of appeal, a habeas petition, or other collateral attack, notwithstanding this
14 agreement, the Defendant agrees that this case shall, upon motion of the government, be
15 remanded to the district court to determine whether Defendant is in breach of this
16 agreement and, if so, to permit the government to withdraw from the Plea Agreement.

17 20. Waiver of Inadmissibility of Statements:

18 The Defendant agrees to waive the inadmissibility of statements made in the
19 course of plea discussions with the United States, pursuant to Fed. R. Crim. P. 11(f).
20 This waiver shall apply if the Defendant withdraws this guilty plea or breaches this Plea
21 Agreement. The Defendant acknowledges that any statements made by the Defendant to
22 law enforcement agents in the course of plea discussions in this case would be admissible
23 against the Defendant in the United States' case-in-chief if the Defendant were to
24 withdraw or breach this Plea Agreement.

25 21. Integration Clause:

26 The United States and the Defendant acknowledge that this document constitutes
27 the entire Plea Agreement between the United States and the Defendant, and no other
28

promises, agreements, or conditions exist between the United States and the Defendant concerning the resolution of the case. This Plea Agreement is binding only upon the United States Attorney's Office for the Eastern District of Washington, and cannot bind other federal, state or local authorities. The United States and the Defendant agree that this agreement cannot be modified except in a writing that is signed by the United States and the Defendant.

Approvals and Signatures

Agreed and submitted on behalf of the United States Attorney's Office for the Eastern District of Washington.

JOSEPH H. HARRINGTON
Acting United States Attorney


IAN L. GARRIQUES
Assistant United States Attorney

9/13/17
Date


I have read this Plea Agreement and have carefully reviewed and discussed every part of the agreement with my attorney. I understand and voluntarily enter into this Plea Agreement. Furthermore, I have consulted with my attorney about my rights, I understand those rights, and I am satisfied with the representation of my attorney in this case. No other promises or inducements have been made to me, other than those contained in this Plea Agreement, and no one has threatened or forced me in any way to enter into this Plea Agreement. I am agreeing to plead guilty because I am guilty.


SUNDRON LARSELL MILLER
Defendant

8-31-17
Date

I have read the Plea Agreement and have discussed the contents of the agreement with my client. The Plea Agreement accurately and completely sets forth the entirety of the agreement between the parties. I concur in my client's decision to plead guilty as set

1 forth in the Plea Agreement. There is no legal reason why the Court should not accept the
2 Defendant's plea of guilty.

3
4 
5 MICHAEL W. LYNCH
Attorney for the Defendant

8/31/17
Date